IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1908 OF 2007

Ramdas Dhondibhau Pokharkar & anr. ..Petitioners

Vs.

The State of Maharashtra ..Respondent

Mr. N.R. Bubna with Mr. R.S. Apte for petitioners.
Mr. A.S. Shitole, APP for State.

CORAM: B.H. MARLAPALLE, J.

Date : November 02, 2007.

P.C.:

1. Heard Mr. Bubna the learned counsel for the petitioners who are the accused in Sessions Case No.19 of 2005. The petitioners-accused had filed three different applications i.e. Exhs.45, 56 and 59. So far as the application at Exh.45 is concerned, the same has been rejected. However, the other two applications i.e. application at Exhs.56 and 59, which appeared to be the repetition of each other and even then the learned Judge of the trial court clearly recorded his opinion that these documents would not be taken into consideration unless the statement of the

accused under Section 313 of Cr.P.C. is recorded and, therefore, he held that the applications at Exhs. 56 and 59 would be kept on record and liberty is given to the accused to press for Exhs.56 and 59 after the statement under Section 313 of Cr.P.C. is recorded. Thus the claim of the accused to bring on record relevant documents has not been discarded as yet and they are likely to be considered only after the statement under Section 313 of Cr.P.C. is recorded.

2. So far as the application at Exh.45 is concerned, the accused had prayed for the recall of PW 1 - Chandrakant Shishupal for his cross-examination and the reason given for the same is that in his earlier depositions he had given false and concocted evidence before the court and had lodged a false complaint with the help of the concerned police. This application was opposed by the prosecution stating that sufficient opportunity was given to the defence to cross-examine the complainant PW 1 and cross-examination was completed.

3. The trial court noted that, in fact, the application at Exh.45 was second such application and the first application for the same purpose was already rejected against which the accused had preferred Criminal Revision Application No.331/06. When the earlier application was filed for recalling PW - Vijaykumar Magar for his cross-examination, obviously, there was an opportunity for the accused to pray for the same relief in the case of Shishupal and this was not done. The application at Exh.45 also did not disclose any reason as to why it was not submitted before 11/9/2006 or immediately after the cross-examination on the second time of Magar was recorded on 3/3/2006. The record also indicated that PW 1 was cross-examined by Shri Milind Pawar the learned Advocate for the petitioners-accused at length and, therefore, the trial court did not find any merit in considering the request to recall PW 1 - Chandrakant Shishupal. The view taken by the trial court, in the facts of this case, cannot be termed as perverse or manifestly erroneous or in any way resulting into miscarriage of justice.

4. Hence the challenge to the impugned order passed by the learned Ad-hoc Addl. Sessions Judge on 13/3/2007 rejecting application at Exh.45 is devoid of merits and consequently the petition fails. The same is hereby rejected summarily.

(B.H. Marlapalle,J.)